

## **NEW HAMPSHIRE ATTORNEY GENERAL** **RESPONSES TO QUESTIONS ON MTBE**

### **What is MTBE?**

MTBE, or methyl tertiary butyl ether, is a chemical formed from methane and isobutylene. Some gasoline refiners use it in some gasoline blends. Originally introduced in the late 1970s as an octane enhancer, MTBE came into widespread use in the mid-1990s, when some refiners chose it to meet certain oxygen-related requirements of federal law for gasoline in some areas of the country.

### **What is the problem with MTBE?**

MTBE has created an unprecedented and serious groundwater contamination problem, which appears to be worsening. The environmental problem with MTBE is that it behaves differently than other gasoline components when released to soil and groundwater, with pernicious effect. MTBE reaches the subsurface via leaks from tanks, pipes, and spills at gas stations and other facilities, as well as from consumer use, such as snowmobiles, boats and lawnmowers. According to the U.S. Environmental Protection Agency:

Unlike other components of gasoline, MTBE dissolves and spreads readily in the groundwater underlying a spill site, resists biodegradation, and is difficult and costly to remove from groundwater. Low levels of MTBE can render drinking water supplies unpotable due to its offensive taste and odor. At higher levels, it may also pose a risk to human health. (EPA, "Advance Notice of Intent to Initiate Rulemaking Under the Toxic Substances Control Act to Eliminate or Limit the Use of MTBE as a Fuel Additive in Gasoline," 65 Fed. Reg. 16094, 16094 (Mar. 24, 2000).)

Because of its peculiar properties, MTBE is showing up in an increasing number of public and private water supplies, even where there is no known gasoline spill or leak nearby. For example, in 2002, MTBE was detected at some level in 23% of the Rockingham County public water systems that were tested. Our preliminary analysis of recent data from a joint NH/USGS study of Rockingham County shows that, with lower detection limits, that number increases to 41% for public water systems and 61% for community (residential) water systems.

### **What does this mean for drinking water?**

New Hampshire has a strict health-based standard of 13 parts per billion (ppb) for MTBE. Where we know that the standard is exceeded, the state has made certain that the

drinking water is treated or that alternate water is provided. Even so, low levels of MTBE can give drinking water a foul taste and odor. MTBE does not belong in drinking water.

**Why is New Hampshire suing the MTBE manufacturers?**

The companies we have sued allegedly made MTBE for use in gasoline or added MTBE to gasoline. MTBE has created an unprecedented environmental problem in New Hampshire. We will prove that the petroleum industry knew that MTBE spreads farther and faster than other components of gasoline, that it resists biodegradation and that it is difficult and costly to remove from groundwater. We also will prove that it knew that spills and leaks of gasoline occur wherever it is used, so that contamination of water resources was inevitable. We will prove that, rather than using available alternatives, the industry chose the least expensive route and increased the amount of MTBE added to gasoline delivered to New Hampshire, while failing to disclose the hazards of its product. We will show that the result is pervasive contamination of the state's waters, especially the groundwater aquifers that most residents rely upon for drinking water. We do not think that the state or the public should pay the many millions of dollars that it will cost to fully address this problem.

**What about the oil companies' claims that the federal government required them to put MTBE in gasoline?**

That simply is not true. The Clean Air Act required that reformulated gasoline ("RFG") be used in certain areas to reduce ozone-related smog. It also required RFG to contain a minimum level of "oxygenate," but it did not require use of MTBE to achieve that level. We will prove that the refiners we have sued chose to use MTBE instead of other oxygenates that would not have threatened the state's waters.

**Did not New Hampshire bring this problem upon itself by joining the federal RFG Program?**

No, for several reasons. First, the state does not control the choice of oxygenate in reformulated gasoline. Second, the state did not have the same information that we allege the industry had on threats to water supplies. Third, only the four southern counties are in the RFG program, but MTBE has been detected throughout the state. Fourth, the state's efforts to remove itself from the RFG program have had little effect on contamination problems.

**Isn't the real problem with leaking Underground Storage Tanks, which shouldn't leak anything (including MTBE)?**

No. New Hampshire has one of the most stringent regulatory programs in the nation for prevention of tank leaks. The problem is that MTBE escapes from these systems more readily than other gasoline components, and, once in the environment, causes far more damage.

**Is this intended as a means to ban MTBE from the state?**

No. This lawsuit does not seek to ban MTBE or otherwise affect clean air or energy policy. As a matter of fact, banning MTBE was debated several years ago, and the state decided, instead, to request EPA to allow it to opt out of the federal RFG program. While that request is pending, we must take whatever action is necessary to protect and restore state waters that already have been contaminated or are threatened.

**Who are the defendants?**

The State is suing only the manufacturer of MTBE and the 21 gasoline refiners that the State understands to have added MTBE to New Hampshire's gasoline.

**How will this suit affect local distributors and retail gas stations?**

The suit should not affect local distributors or retailers. We are not pursuing these entities because they played no part in the decision to manufacture gasoline with MTBE. In fact, we believe that they were deceived along with the state by the oil and chemical manufacturers and are now having to address MTBE leaks from their stations, which occur even when storage tanks pass tightness tests. We believe the litigation will benefit them, as well as the public, by shifting the burden of addressing this problem to those responsible for creating it.

**What relief is the State seeking?**

The State seeks monetary damages sufficient to cover the full costs of investigating, monitoring, remediating and treating drinking water, and to fully restore the State's waters. The exact amount will be established at trial.